

**Matter of Friedman v New York State Div. of Human Rights**

2011 NY Slip Op 32313(U)

August 25, 2011

Supreme Court, New York County

Docket Number: 104301/11

Judge: Donna M. Mills

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SUPREME COURT OF THE STATE OF NEW YORK— NEW YORK COUNTY

PRESENT : DONNA M. MILLS  
*Justice*

PART 58

MOSHE FRIEDMAN,

INDEX No. 104301/11

Petitioner,

MOTION DATE \_\_\_\_\_

-v-

MOTION SEQ. NO. 001

NEW YORK STATE DIVISION OF HUMAN RIGHTS, et al.,

Respondents.

MOTION CAL NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to \_\_\_\_\_.

PAPERS NUMBERED

Notice of Motion/Order to Show Cause-Affidavits- Exhibits....

1

Answering Affidavits- Exhibits \_\_\_\_\_

2+3

Replying Affidavits \_\_\_\_\_

4

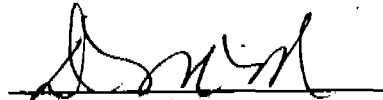
CROSS-MOTION: \_\_\_\_\_ YES  NO

Upon the foregoing papers, it is ordered:

SEE ATTACHED MEMORANDUM DECISION

Dated:

8/25/11



**DONNA M. MILLS, J.S.C.**

Check one:

FINAL DISPOSITION

NON-FINAL DISPOSITION

**UNFILED JUDGMENT**

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 58

-----X  
In the Matter of the Application of  
MOSHE FRIEDMAN,  
  
Petitioner,

-against-

Index No. 104301/11

NEW YORK STATE DIVISION OF HUMAN RIGHTS  
AND THE TRUSTEES OF COLUMBIA UNIVERSITY  
IN THE CITY OF NEW YORK,  
  
Respondents.

-----X  
**DONNA M. MILLS, J.:**

In this special proceeding, petitioner Moshe Friedman challenges a determination of co-respondent New York State Division of Human Rights ("DHR"). Friedman's petition seeks relief from the DHR Determination and Order dated February 17, 2011, dismissing his verified complaint as untimely.

Friedman's complaint alleged that Columbia University's decision to terminate his employment was based on his age, creed and gender in violation of the New York State Human Rights Law, Executive Law § 296. DHR found that the complaint was untimely because it was not filed with them within one year after the alleged unlawful discriminatory practice, as required by section 297.5 of the Human Rights Law.

It is undisputed that on January 7, 2010, Friedman was notified that his position with Columbia University was being eliminated, and that his employment would be terminated, effective January 31, 2010. The dispute in this action is the date of filing of the complaint with DHR. Friedman maintains that the date of filing should be either the date it was notarized and postmarked, which was January 7, 2011, or the earlier date of January 5, 2011 when he attempted

to file his complaint with the New York City Human Rights Commission (“NYCHRC”). Respondents both argue that the relevant date of filing is January 11, 2011 the date DHR received the Friedman complaint.

An Article 78 proceeding is a special proceeding. It may be summarily determined upon the pleadings, papers, and admissions to the extent that no triable issues of fact are raised. (CPLR 409 [b]; 7801, 7804 [h].) Thus, much like a motion for summary judgment, the court should decide the issues raised on the papers presented and grant judgment for the prevailing party, unless there is an issue of fact requiring a trial. (CPLR 7804 [h]; Matter of York v McGuire, 99 AD2d 1023 [1984], affd 63 NY2d 760 [1984]).

Executive Law article 15, New York’s Human Rights Law, precludes discrimination in employment on the basis of age, race, creed, color, national origin, sexual orientation, sex, disability, genetic predisposition or carrier status or marital status (Executive Law § 296 [1]). “To ensure the protection of [these rights] the Legislature enacted a comprehensive statutory scheme that provides employees with both the means to combat employment discrimination and a framework for redress” (Matter of Aurecchione v New York State Div. Of Human Rights, 98 NY2d 21, 25 [2002]). Integral to the scheme was the creation in 1968 of the Division of Human Rights, an executive agency whose primary mission is to actively enforce the substantive provisions of the Human Rights Law (see L 1968, ch 958).

Executive Law § 297 sets forth the procedures for the filing and resolution of complaints of unlawful discrimination by the DHR. That statute specifically prescribes the time period within which an aggrieved party must pursue relief, requiring that the party file a verified complaint in writing with the DHR “within one year after the alleged unlawful discriminatory

practice” (Executive Law § 297 [5]; see also 9 NYCRR 465.3 [e]). New York Courts construe this one-year limitations period as mandatory and, thus, warranting a dismissal in the event of noncompliance (Bd. Of Educ. Of Farmingdale Union School Dist. v New York State Div. Of Human Rights, 56 NY2d 257 [1982]).

Friedman argues that he met the one-year limitations because his verified complaint was purportedly notarized and “postmarked” on January 7, 2011. Although the complaint was mailed on this date, this court deems this insufficient to satisfy the time limitation of Executive Law § 297, which must be strictly construed (Id). Inasmuch as there is nothing in the statute or its implementing regulation indicating that the timely mailing of an application or a hearing is sufficient, the timeliness of such a request must be measured by the date it was filed with the DHR rather than the date it was mailed (see Mater of Michicich v Colonial Maid Curtains, 134 AD2d 688 [

The determination of the DHR that the petitioner’s complaint was time barred is not arbitrary and capricious or an abuse of discretion (see, CPLR 7803 [3]; see also, Executive Law § 298). The record clearly establishes that the complaint was untimely under the one-year statute of limitations found in Executive Law § 297 [5] because it was filed more than one year after the petitioner had received notice of what he purports to be a discriminatory purpose in his termination. Additionally, the petitioner’s attempt to file the complaint on January 5, 2010 with the NYCHR did not toll the Statute of Limitations.

Accordingly, the petitioner’s complaint filed four days after the one-year limitations period expired, was untimely. The petitioner’s remaining contentions are without merit.

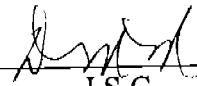
Accordingly it is

ADJUDGED that the petition is denied; and it is further

ADJUDGED that the proceeding is dismissed.

Dated: 8/25/11

ENTER:

  
\_\_\_\_\_  
J.S.C.

**DONNA M. MILLS, J.S.C.**

**UNFILED JUDGMENT**

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